449; *Bowden* v. *Brown*, 200 Mass. 269, 86 N. E. 351. See 2 PERRY, TRUSTS, 6 ed., §§ 723, 726, 727, 728, note *a*; 1 JARMAN, WILLS, 6 Am. ed., star pp. 206–210; 33 HARV. L. REV. 598; 4 VA. L. REV. 224. The heirs should take, not under the express gift over (which after the perpetual gift to charity is void for remoteness), but under a resulting trust (which is not affected by the rule against remoteness). *Bowden* v. *Brown*, *supra*. See 2 PERRY, *op. cit.*, §§ 724, 726. See GRAY, RULE AGAINST PERPETUITIES, 2 ed., §§ 592, 593, 603 *e*, 603 *i*. The court seems to have lost sight of this possibility, and to have acted on a misapprehension of *In re Bowen*, [1893] 2 Ch. 491. The language of *In re Bowen* leaves us in doubt as to the ultimate disposition of the property in that case; but the decision, that an express gift over to third parties in a similar settlement is void, is entirely sound, and warrants no such result as the court reached here.

WAREHOUSEMEN — CONTRACT EXEMPTING FROM LIABILITY FOR NEGLIGENCE. — A lumber company, to whose rights the plaintiff stands subrogated, was notified by the defendant company that during an anticipated strike it would store no lumber except on condition that it be free from liability for loss from any cause. Lumber stored during the strike was burned during a fire caused by the negligence of one of the defendant's employees in operating a machine attached to an improperly constructed oil tank. *Held*, that the plaintiff cannot recover. *Northwestern Mutual Fire Ass'n* v. *Pacific Wharf and Storage Co.*, 200 Pac. 934 (Cal.).

By the weight of American authority, bailees engaged in businesses "affected with a public interest" may not contract for exemption from liability for negligence. *Railroad Co.* v. *Lockwood*, 17 Wall. (U. S.) 357. See *Gulf Compress Co.* v. *Harrington*, 90 Ark. 256, 119 S. W. 249; *Patterson* v. *Wenatchee Canning Co.*, 59 Wash. 556, 558, 110 Pac. 379, 380. *Contra*, *Cragin* v. *N. Y. C. Ry. Co.*, 51 N. Y. 61. On principle this seems sound. It is contrary to public policy that bailees whose services are almost indispensable to the public and who enjoy unusual advantages should be permitted to use the strength of their position to coerce the public into oppressive contracts. See *Railroad Co.* v. *Lockwood*, *supra*, at 379. See Hugh E. Willis, "The Right of Bailees to Contract against Liability for Negligence," 20 HARV. L. REV. 297. If the prevailing doctrine is accepted, the principal case cannot be upheld because of its exceptional circumstances. The existence of the strike might justify the defendant in discontinuing its business; but the defendant has not done so. While the business is continued, it is doubtful if the defendant can limit its liability even for the results of the strike, such as the negligence of inexperienced employees. The interests against such limitation still outweigh the interests of the defendant. *A fortiori* there is no ground for allowing a general limitation, covering a case where the negligence is, as here, entirely disconnected from the strike.

WILLS — CONSTRUCTION — "DIE WITHOUT ISSUE WHO SHALL REACH TWENTY-ONE." — A farm was devised to A for life, then to B absolutely, but if B should "die without issue who shall reach twenty-one," then to C. The Wills Act provides that words "which may import either a want or failure of issue of any person in his lifetime or at his death or an indefinite failure of his issue," shall be construed to mean a definite failure of issue unless a contrary intention shall appear by the will. (7 WILL. 4 & 1 VICT., c. 26, § 29.) *Held*, that the gift to C is void for remoteness. *In re Thomas*, [1921] 1 Ch. 306.

Where in a gift on failure of issue either a definite or an indefinite failure might be meant, the common law presumed that the testator intended an indefinite failure. *Candy* v. *Campbell*, 2 Cl. & F. 421. See HAWKINS, WILLS, 1 ed., 206. The Wills Act presumes a definite failure. See LEWIS, LAW OF

PERPETUITY, 396-404; 2 JARMAN, WILLS, 6 Am. ed., star pp. 1321, 1323. The words must be capable of the alternate construction before they are subject to the common-law presumption, or fall within the language of the Wills Act. In the principal case the words can hardly import a failure of issue only in B's lifetime or at his death, for obviously they cover the case where B dies leaving issue alive who afterward reach twenty-one. Neither can they reasonably import an indefinite failure of issue, for in such case the qualifying "who shall reach twenty-one" would be without intelligent meaning. A sensible testator could not mean, for example, that if the last of the line of issue died childless at forty, his heirs would keep forever; but that if the same individual died at forty leaving an infant child who died before majority, the gift over should take effect. The words are thus capable of neither construction mentioned in the Wills Act. The testator's intention is not ambiguous. He intended a gift over if no issue of B, living at or before B's death, should reach twenty-one. *Cf. In re Chinnery's Estate*, 1 L. R. Ir. 296. The gift over could take place no later than twenty-one years after the death of B, a living person. It is not too remote.

BOOK REVIEWS

THE NATURE OF THE JUDICIAL PROCESS. By Benjamin N. Cardozo. New Haven: Yale University Press. 1921. pp. 180.

Judge Cardozo has in this book tried his hand at one of those problems which have fascinated the mind of mankind since it began to ponder upon the meaning of law. The position of an English speaking judge, especially, presents an apparent contradiction that has always exercised those who are speculatively inclined. The pretension of such a judge is, or at least it has been, that he declares pre-existing law, of which he is only the mouthpiece; his judgment is the conclusion of a syllogism in which the major is to be found among fixed and ascertainable rules. Conceivably a machine of intricate enough complexity might deliver such a judgment automatically were it only to be fed with the proper findings of fact. Yet the whole structure of the common law is an obvious denial of this theory; it stands as a monument slowly raised, like a coral reef, from the minute accretions of past individuals, of whom each built upon the relics which his predecessors left, and in his turn left a foundation upon which his successors might work.

We have grown more self-conscious of late and can no longer content ourselves with fictions; and candid men like Judge Cardozo will not stomach those equivocations which keep the promise to the ear and break it to the hope. So, while he is aware enough of the limitations upon a judge's freedom, he is more acutely aware than many of his contemporaries of the extent to which he must choose responsibly. His essay tells us of the different factors which may properly enter into a judge's consideration. He must be faithful to the past, of which he is the inheritor, but not too faithful; he must remember that he lays down a rule of general application, — consistency for him is a jewel; but beyond all he must remember that he is a priest of his time, the interpreter of an inarticulate will, which accepts the past only in part, — no more of it than the present has not yet awakened to repudiate.

No quantitative valuation of these elements is possible; the good judge is an artist, perhaps most like a *chef*. Into the composition of his dishes he adds so much of this or that element as will blend the whole into a compound, delectable or at any rate tolerable to the palates of his guests. The test of his success is the measure in which his craftsman's skill meets with general acceptance. There are no *vade mecums* to this or any other art. It